STATE OF MICHIGAN

COURT OF APPEALS

AARON LLOYD and DIONNA LLOYD,

Garnishors/Plaintiffs-Appellees,

v

ROY LEE AUSTIN,

Defendant,

and

ALLSTATE INSURANCE COMPANY,

Garnishee/Defendant-Appellant.

UNPUBLISHED
April 15, 2003

No. 239552
Wayne Circuit Court
LC Nos. 98-839436-NI

ALLSTATE INSURANCE COMPANY,

Plaintiff-Appellant,

v

AARON LLOYD and DIONNA LLOYD,

Defendants-Appellees,

No. 239553
Wayne Circuit Court
LC No. 00-015468-NI

Before: Meter, P.J., and Cavanagh and Cooper, JJ.

PER CURIAM.

Allstate Insurance Company appeals by right from a judgment for plaintiffs entered in these consolidated cases involving an insurance coverage dispute. We affirm.

In December 1998, plaintiffs filed a complaint alleging that defendant Roy Lee Austin negligently caused his vehicle to collide with plaintiffs' vehicle on July 11, 1998, resulting in serious injuries to plaintiffs. In February 1999, as part of a motion for alternate service, plaintiffs stated that "[i]t has been confirmed through defense counsel . . . that . . . Austin is insured through Allstate Insurance Company."

On July 1, 1999, plaintiffs moved for a default judgment, claiming that Austin had failed to cooperate with discovery. On October 8, 1999, the trial court granted plaintiffs' motion, ordering "that a Judgment in an amount to be determined is entered against the Defendant, Roy Lee Austin." On November 5, 1999, the trial court entered a judgment for plaintiffs in the amount of $325,000.

Meanwhile, on September 10, 1999, Allstate filed a complaint for declaratory relief in the United States District Court for the Eastern District of Michigan, stating, among other things:

> 10. That Defendant Roy Lee Austin tendered the defense and indemnification of his case to the Plaintiff herein, Allstate Insurance Company, as his alleged insurer.
>
> 11. That Roy Lee Austin did not have a policy of insurance in force with Allstate Insurance Company on the date and at the time of the loss, July 11, 1998 at 12:55 a.m., and therefore is not entitled to defense or indemnification by Allstate Insurance Company in connection with this matter.
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> 12. That, to date, and in recognition of its statutory and common law obligations, Allstate Insurance Company has provided for the defense of Roy Lee Austin in the principal action but does not owe said defense and did not owe said defense to him due to the fact that there is no valid policy of insurance in existence between Roy Lee Austin and Allstate. [Underlining in original.]

After plaintiffs filed a writ of garnishment against Allstate in the state court on April 26, 2000, Allstate responded by alleging that [t]here is no valid policy of insurance in existence covering the underlying accident." Then, on January 5, 2001, plaintiffs filed a motion for summary disposition under MCR 2.116(C)(10), stating, among other things:

> 2. On October 15, 1998, Plaintiffs, holders of a no-fault policy with Allstate, filed a complaint in this Court for PIP benefits. . . . Plaintiffs' complaint also alleged that the subject accident was "caused by an uninsured motorist" and demanded arbitration under their policy's UM provision[1]. . . .
>
> 3. In its answer to Plaintiffs' complaint, affirmative defenses, and an unresponded to request for admission, Allstate admitted that it insured Roy Austin under a no-fault policy at the time of the accident. . . .
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> 4. On December 6, 1998, relying on Allstate's November 12, 1998 admission that it insured Austin for the subject accident, Plaintiffs filed the instant third-party complaint against Austin in this Court.

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[1] Apparently, plaintiffs' claim for uninsured motorist benefits was dismissed on January 14, 2000, under a settlement agreement awarding plaintiffs $32,000. The release, dated January 28, 2000, states that the "uninsured motorist payment described herein shall not affect the validity or invalidity" of the third-party claim against Austin.

* * *

> 7. As default proceedings against Austin were pending, on September 10, 1999, Allstate filed a complaint in the U.S. District Court against Plaintiffs and Austin seeking a declaration that it owed no duty to defend or indemnify Austin in Plaintiff's [sic] third-party claim. Allstate did not serve this federal declaratory complaint on Plaintiffs until December 1, 1999 – well after entry of the default judgment against Austin.
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> 8. On May 10, 2000, U.S. District Judge Nancy Edmunds granted Plaintiffs' motion to dismiss, declining jurisdiction over Allstate's declaratory actions. In so ruling, Judge Edmonds stated that Allstate had "twice admitted that Roy Lee Austin was insured by them on the date of the accident . . . and cannot now ask this forum to render a different result."

Plaintiffs argued that "both the doctrines of equitable and judicial estoppel preclude Allstate from now disclaiming coverage of Austin under its policy."

Plaintiffs attached to their motion for summary disposition several documents. The documents demonstrated that Allstate responded to plaintiffs' initial complaint for first-party personal injury protection (PIP) benefits by stating the following, among other things, in its affirmative defenses:

> Plaintiffs knew and are aware that the other driver in this accident was insured, and the Plaintiffs were informed through counsel of this prior to the filing of their lawsuit; therefore, the claim for arbitration [under an uninsured motorist provision] is frivolous and Plaintiffs and their counsel should be subjected to sanctions pursuant to statue and court rule for the filing of frivolous claims.

The documents further demonstrate that Allstate made a similar assertion in its answer to the complaint and that plaintiffs sent Allstate the following request for admission on December 7, 1998: "Admit that Allstate insured Roy Lee Austin at the time of the subject accident." The record does not demonstrate that Allstate responded to this request for admission. Under MCR 2.312(B)(1), "[e]ach matter as to which a request is made is deemed admitted unless" the opposing party responds within a specified period.

Plaintiffs attached to their motion the transcript of the court's ruling in the federal declaratory judgment action. In dismissing the case, the court stated that "[a] declaratory judgment in Michigan appears to be superior to a declaratory judgment action here." In reaching its decision, the court discussed several factors, stating, in part:

> First of all, a decision from this court regarding whether or not Mr. Austin was insured by Allstate isn't going to settle any controversy between the parties. There is no controversy over that as far as I'm concerned. Allstate is requesting that this court make a decision that runs counter to the admission that they made in the state court regarding Mr. Austin's coverage. In state court, Allstate failed to answer a request for an admission that Mr. Austin was insured by them on the

> date of the accident. His failure to answer constitutes an admission of that fact. Allstate now seeks to affect an end run around this admission. . . .
>
> This issue which Allstate asks this Court to render a decision with respect to has already been determined by their admission in the state court proceedings. Allstate shouldn't be able to seek a different result in this court.

Plaintiffs also attached to their motion the deposition of Thomas Remski, a claims adjuster for Allstate. Remski testified that Allstate did not insure Austin on the date of the accident (July 11, 1998) because Austin's policy did not take effect until July 12, 1998. Remski testified that Austin called in a claim on August 14, 1998, and reported that the loss occurred on August 11, 1998. He stated that Allstate did not learn of the true date of the accident until September 15, 1998.

Allstate responded to plaintiffs' motion for summary disposition by stating, among other things, that any admissions that occurred with respect to plaintiffs' initial claim for first-party PIP benefits were not binding in the instant third-party case and that the U.S. district judge merely "declined jurisdiction" over the federal declaratory judgment case and did not make any factual findings regarding Allstate's admission that it insured Austin on the date of the accident. Allstate also stated that Austin's "fraud and deceit" in misrepresenting the date of the accident "was not discovered until March/April 1999."

The trial court granted plaintiffs' summary disposition motion on November 27, 2001. The court declined to rely on the opinion of the federal district court but found that "under traditional principles of insurance law, Defendant Insurer should be estopped from now denying that the other driver was its insured." The court noted that plaintiffs might have settled for less money in the first-party case, believing that Allstate insured the potential defendant in the third-party case. It further stated that judicial estoppel precluded Allstate from denying that it covered Austin on the date of the accident, noting that "[f]rom the viewpoint of judicial procedure, Defendant's contradictory assertions raise the disturbing possibility that the outcome here was dependent on vagaries of form, on whether Plaintiffs moved under both policies simultaneously or sued separately under each." The court later granted plaintiffs' motion for entry of judgment of a sum certain – $231,504.73 – in accordance with Allstate's policy limits.[2]

On appeal, Allstate claims that the trial court erred in granting plaintiffs' motion for summary disposition. Allstate spends a considerable portion of its brief arguing that the trial court should not have relied on the opinion of the federal district court in the federal declaratory judgment action. However, our review of the state trial court's decision indicates that it did *not* in fact rely on the federal court's opinion. Allstate also argues that "the admission in the first-

[2] We note that Allstate filed a state court action for declaratory relief on May 12, 2000. The motions filed and arguments made in that case largely parallel the motions filed and arguments made with respect to plaintiffs' garnishment action. Accordingly, they will not be summarized in this opinion. The cases were consolidated by the trial court, and the court dismissed the declaratory judgment action after it granted plaintiffs' motion for summary disposition in the garnishment action. On appeal, Allstate focuses on the trial court's grant of summary disposition in the garnishment action.

party PIP matter has nothing to do with the third-party action involving Defendant Austin nor this garnishment proceeding" and that "admitting a fact that is believed to be true cannot be considered a manipulation of the judicial system."

We review a trial court's grant of summary disposition de novo. *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 357; 597 NW2d 250 (1999). In reviewing a motion for summary disposition granted under MCR 2.116(C)(10), we consider the pleadings, affidavits, depositions, admissions, and other documentary evidence available to determine if any genuine issue of material fact exists. *Wilcoxon, supra* at 357-358. We resolve all legitimate inferences in favor of the nonmoving party. *Id*. at 358.

As noted in *Westfield Cos v Grand Valley Health Plan*, 224 Mich App 385, 390-391; 586 NW2d 854 (1997), quoting *Soltis v First of America Bank-Muskegon*, 203 Mich App 435, 444; 513 NW2d 148 (1994), equitable estoppel occurs when

> "a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, the other party justifiably relies and acts on that belief, and the other party will be prejudiced if the first party is allowed to deny the existence of those facts."

Here, Allstate did represent that Austin was insured on the date of the accident, and it negligently induced plaintiffs to believe the representation. Indeed, Thomas Remski indicated that Allstate discovered the actual date of the accident on September 15, 1998, yet Allstate nonetheless represented in *later* court filings that Austin was insured on the date in question. Allstate went so far as to threaten plaintiffs with sanctions for seeking uninsured motorist benefits. Moreover, plaintiffs relied on Allstate's representations by filing a third-party lawsuit against Austin. Finally, plaintiffs would be prejudiced if Allstate were allowed to now deny that it insured Austin on the date of the accident. Indeed, by filing and proceeding with the case against Austin, plaintiffs expended effort and incurred expenses that would be to no avail if Allstate were allowed to deny coverage. Accordingly, we conclude that the principles of equitable estoppel apply to the instant case and that the trial court did not err in concluding as much.[3]

With regard to the trial court's finding concerning judicial estoppel, we note that the discussion of this doctrine in Allstate's appellate brief is so sparse and without supporting authority that we consider Allstate's challenge to the finding to be insufficient. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) (a party may not "'simply . . . announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position'").

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[3] Allstate contends that under MCR 2.312(D)(2), its admission in response to the request for admissions in the first-party PIP case cannot be used against it in the instant garnishment and declaratory judgment cases. However, Allstate also made a representation in its answer and affirmative defenses in the first-party PIP case that Austin was insured on the date of the accident and in fact threatened plaintiffs with sanctions for arguing to the contrary. MCR 2.312(D)(2) does not apply to answers or affirmative defenses.

Finally, Allstate argues that the final judgment awarding a sum certain to plaintiffs must be reduced to the statutorily-required minimum limits under *Farmers Ins Exchange v Anderson*, 206 Mich App 214; 520 NW2d 686 (1994). In *Farmers, supra* at 217, the Court considered

> whether an automobile insurer who, upon discovering that the insured has made fraudulent and material misrepresentations in procuring the policy, may assert rescission as a basis to limit its liability to the statutory minimum, even when innocent third parties have been injured.

The Court ruled that an insurance company may indeed "use fraud as a defense to limit coverage under the policy to the statutory minimum." *Id.* at 220-221. However, the Court also stated:

> when fraud is used as a defense in situations such as these, the critical issue necessarily becomes whether the fraud could have been ascertained easily by the insurer at the time the contract of insurance was entered into. We think it unwise to permit an insurer to deny coverage on the basis of fraud after it has collected premiums, when it easily could have ascertained the fraud at the time the contract was formed. . . .

The trial court in the instant case found that *Farmers* did not apply because "it should have been clear to the insurer early on that Mr. Austin was not insured on the day of the accident." We find no error with respect to this finding.[4] The trial court did not err in awarding damages in accordance with the policy limits.

Affirmed.

/s/ Patrick M. Meter
/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper

[4] Moreover, as noted earlier, Thomas Remski testified that Allstate learned of the date of the actual date of the accident on September 15, 1998, before the representations of coverage made by Allstate.